

United States
Circuit Court of Appeals
For the Ninth Circuit.

ROKIYI TAMBARA,

Appellant,

vs.

LUTHER WEEDIN, as United States Commis-
sioner at the Port of Seattle, Washington,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Western District of Washington, Northern Division.

FILED

NOV 10 1923

F. B. MANN, CLERK

No. —

In the
**United States Circuit Court
of Appeals**
For the Ninth Circuit

IN THE MATTER OF THE PETITION OF
ROKIYI TAMBARA, FOR A WRIT OF
HABEAS CORPUS

TRANSCRIPT UPON APPEAL

FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHING-
TON, NORTHERN DIVISION

JAMES KIEFER,
Attorney for Appellant.
327 Colman Bldg., Seattle, Wash.

HON. THOS. P. REVELLE,
United States Attorney,
310 Federal Building, Seattle, Washington,

HON. DEWOLFE EMORY,
Assistant United States Attorney,
Attorneys for Appellee.

I N D E X

	<i>Page</i>
Appeal Bond -----	22
Appeal, Notice of -----	17
Appeal, Order Allowing -----	16
Appeal, Petition for -----	14
Citation -----	20
Clerk's Certificate -----	27
Error, Assignments of -----	18
Habeas Corpus, Petition for Writ of -----	3
Opinion of Trial Court -----	11
Order Denying Writ of Habeas Corpus -----	13
Order to Show Cause -----	7
Return to Order to Show Cause -----	8
Stipulation and Order for Transmission of Original Exhibits -----	25

In the District Court of the United States for
the Western District of Washington,
Northern Division

No. 7845

IN THE MATTER OF THE PETITION OF
ROKIYI TAMBARA, FOR A WRIT OF
HABEAS CORPUS

ROKIYI TAMBARA,

Appellant.

JAMES KIEFER,

Attorney for Appellant.

HON. THOS. P. REVELLE,

United States Attorney,

DEWOLFE EMORY,

Asst. United States Attorney,

Attorneys for Appellee.

Petition for Writ of Habeas Corpus filed August
30, 1923.

Order to Show Cause why Writ of Habeas Corpus
should not issue returnable September 10, 1923.
September 10, 1923, cause continued to September
17, 1923.

September 17, 1923, return of United States Com-
missioner of Immigration to order to show cause
filed.

September 18, 1923, argument and hearing taken under advisement.

September 19, 1923, memorandum decision filed denying writ.

October 11, 1923, order denying writ of habeas corpus filed.

October 11, 1923, petition for appeal fixed;

Order allowing appeal and fixing bond on appeal filed;

Notice of appeal filed;

Assignments of error filed;

Order awarding citation and bond on appeal approved and filed;

October 30, 1923, stipulation and order as to printing and forwarding original exhibits filed.

No. 7845

IN THE MATTER OF THE PETITION OF
ROKIYI TAMBARA, FOR A WRIT OF
HABEAS CORPUS

Petition for Writ of Habeas Corpus

*To the Honorable, the Judges of the Above Entitled
Court:*

The petition of Rokiya Tambara respectfully represents:

I

That he is a subject of the Emperor of Japan.

II

That he resided in the United States for a number of years, and on the 17th day of June, 1923, he returned to the United States on the steamer Iyo Maru after a visit to Japan; that he had a proper passport issued by the proper authorities of the Government of the Empire of Japan; that upon landing he was denied admission to the United

States by the Board of Special Inquiry at the United States Immigration Station in the Port of Seattle, because being slightly deaf the Board of Special Inquiry holding and finding that the petitioner was likely to become a public charge, and thereafter the said Board of Special Inquiry reopened the case and heard further evidence and re-affirmed its former finding, and again denied your petitioner the right to enter the United States upon the same ground.

III

That your petitioner is able bodied, has always been able to earn a good living in the United States during his previous stay here; that it appears in the evidence taken by the Board of Special Inquiry that he is offered employment in two (2) responsible quarters, one of them in a sawmill where he worked for four (4) years before making a visit to Japan, being steadily employed; that it appears from the record at the hearing that the Superintendent of the mill plant where he was formerly employed stands ready to re-employ your petitioner at four (\$4.00) dollars per day, and in addition to that a firm of Japanese merchants in the City of Portland, Oregon, have filed an affidavit in the

proceedings in the Immigration Office, and which is a part of the record, setting up their willingness to employ petitioner at remunerative wages.

IV

That the Board of Special Inquiry had before it no evidence whatever even remotely intending to show that your petitioner's slight deafness would incapacitate him from earning a living, or that he was in the remotest degree likely to become a public charge, but on the contrary the evidence in the record shows conclusively that your petitioner is not suffering with any marked degree of deafness, and that the same would interfere with him earning a living, and said record further shows that your petitioner was able to hear ordinary loud voices, and was able to hear the ticking of a watch held at a reasonable distance from his ears, and your petitioner alleges the fact to be that the Board of Special Inquiry denied your petitioner admission to the United States solely and simply because the examining surgeon certified that your petitioner was deaf and stated in his certificate his conclusion that the deafness would interfere with your petitioner's ability to earn a living, and your petitioner was likely to become a public charge.

V

That your petitioner is in the custody of Luther Weedin, United States Commissioner of Immigration for the Port of Seattle, for deportation on September 4, 1923.

WHEREFORE, your petitioner prays that an order may be made herein requiring said Luther Weedin, United States Commissioner of Immigration for the Port of Seattle, to show cause why a writ of habeas corpus should not be issued herein requiring the said Luther Weedin, as United States Commissioner of Immigration, as aforesaid, to produce your petitioner before this Court, and why your petitioner should not be discharged and allowed to remain in the United States.

ROKIYI TAMBARA,
Petitioner.

United States of America,)
Western District of Washington,) ss.
County of King.)

ROKIYI TAMBARA, being sworn on oath, says: That he has heard the foregoing petition read, knows the contents thereof, and that the facts therein stated are true.

ROKIYI TAMBARA.

Subscribed and sworn to before me this 30th day of August, 1923.

(Seal)

JAMES KIEFER,
*Notary Public in and for the State
of Washington, residing at Seattle.*

Filed in the United States District Court, Western District of Washington, Northern Division, August 30, 1923.

F. M. HARSHBERGER, *Clerk.*
By S. E. LEITCH, *Deputy.*

No. 7845

Order to Show Cause

In this cause, the petition of Rokiya Tambara having been presented to the Court,

IT IS BY THE COURT ORDERED, that Luther Weedin, as United States Commissioner of Immigration for the Port of Seattle, in this District, do show cause before this Court, on the 10th day of September, 1923, at the hour of ten (10) o'clock A. M., why a writ of habeas corpus should not issue herein, commanding the said Luther Weedin, as Commissioner as aforesaid, to produce the body of said petitioner before this Court.

Done in open Court, August 30, 1923.

FRANK S. DIETRICH, *Judge.*

Filed in the United States District Court, Western District of Washington, Northern Division, August 30, 1923.

F. M. HARSHBERGER, *Clerk.*

By S. E. LEITCH, *Deputy.*

No. 7845

Return

To the Honorable Jeremiah Neterer, Judge of the District Court of the United States for the Western District of Washington:

NOW comes the respondent LUTHER WEEDIN, United States Commissioner of Immigration for the District of Washington, with his office at the Port of Seattle, Washington, and for answer and return to the order to show cause entered herein says, that at the time of the service of said order to show cause and of the petition herein the said ROKIYI TAMBARA was in the custody of said respondent and was held by this respondent for deportation from the United States as an alien person not entitled to admission under the laws of the

United States, and subject to deportation under the laws of the United States; the said ROKIYI TAMBARA having been theretofore detained by this respondent at the time the said ROKIYI TAMBARA arrived in the United States from Japan, the said ROKIYI TAMBARA being a member of a class of persons excluded from admission to the United States at said time, by Section 3 of the Act of February 5, 1917, in this, that he, the said ROKIYI TAMBARA was at said time a person found to be, and certified by the examining surgeon as being, physically defective, such physical defect being of a nature which may affect the ability of said alien to earn a living, and the said ROKIYI TAMBARA then and there being a person likely to become a public charge.

Respondent hereto attached the original records of the Department of Labor, both on the hearing at Seattle and on the submission of the records to the Department at Washington, D. C., which papers are hereby made part and parcel of this Return the same as if copied herein in full.

WHEREFORE, respondent prays that said Writ of Habeas Corpus be denied.

LUTHER WEEDIN,
Commissioner of Immigration.

United States of America,)
Western District of Washington,) ss.
Northern Division.)

LUTHER WEEDIN, being first duly sworn on his oath deposes and says: That he is Commissioner of Immigration named in the foregoing return; that he has read the said return; knows the contents thereof, and that he believes the same to be true.

LUTHER WEEDIN.

Subscribed and sworn to before me this 17th day of September, 1923.

(Notary Seal)

D. L. YOUNG.

Filed in the United States District Court, Western District of Washington, Northern Division, September 17, 1923.

F. M. HARSHBERGER, *Clerk.*

By S. E. LEITCH, *Deputy.*

No. 7845

Decision

Filed 10-19-23

James Kiefer, Attorney for the Petitioner.

Thomas P. Revelle, U. S. Attorney, and De Wolfe
Emory, Asst. U. S. Atty.

Attorneys for the United States.

NETERER, District Judge:

The petitioner was denied admission by the Board of Special Inquiry, which was affirmed on appeal by the Sec'y of Labor. A further hearing was granted by the Board, and the former order re-affirmed. He petitions for release on a writ of Habeas Corpus, on the ground that he was denied a fair trial. The petitioner was excluded on the "ground that he is physically defective and a person likely to become a public charge." The testimony shows that the petitioner is partially deaf. The following is in the record:

"This applicant appears to be very deaf. During the hearing it was necessary for the interpreter to speak loudly, directly into applicant's ear, to enable him to understand the questions. He was un-

able to hear the ticking of a watch held within one inch of either ear."

It also appears that:

"It is very difficult for the interpreter to make the applicant understand oral questions, and a part of the questions are propounded to him by writing."

The examining surgeon certifies as follows:

"This is to certify that the above described person has this day been examined and is found to be afflicted with deafness with such a degree as to interfere with his ability to earn a living."

Upon re-hearing it was shown that while the petitioner was in the United States some three or four years ago, that he was employed at \$4.00 per day; that his deafness at that time did not interfere with the work in which he was engaged. There is also an offer in the record by the manager of the Teikoku Co. of Portland, Oregon, to give him "a permanent job, a job that will pay wages sufficient for him to be free and independent."

There is nothing in the record to indicate that the petitioner was not accorded a fair trial, *U. S. v. Williams*, 190 Fed. 897; and that limits the court's jurisdiction, *Chin Yow v. U. S.*, 208 U. S. 11. Sec. 3 of the Immigration Act, Feb. 5, 1917, excluding

aliens, among other things provides: “* * * such physical defect being of a nature which may affect the ability of the alien to earn a living shall be excluded.” The Board was strictly within the provisions of the law. To admit the alien because of the offer of employment is without warrant of law. *Wallis v. U. S.*, 273 Fed. 509; *U. S. v. Williams*, 204 Fed. 844. The writ is denied.

NETERER, *Judge*.

Filed in the United States District Court, Western District of Washington, Northern Division, September 19, 1923.

F. M. HARSHBERGER, *Clerk*.

By S. E. LEITCH, *Deputy*.

No. 7845

Order Denying Writ

This matter having come on regularly this day in its order to be heard on the application of the United States Attorney for an order denying petitioner's application for a writ of habeas corpus herein, said matter having heretofore been presented to the Court orally by James Kiefer, Esquire, attorney for said petitioner, and DeWolfe Emory, Assistant United States Attorney, and the Court having here-

tofore and on to-wit, the 19th day of September, 1923, filed its decision denying the said writ, and being duly advised in the premises, it is hereby

ORDERED that the writ so prayed for be, and the same is hereby, denied and the applicant ROKIYI TAMBARA is remanded into the custody of the Commissioner of Immigration at the Port of Seattle, Washington, for deportation in accordance with a decision of the Secretary of Labor. In event of appeal petitioner may be enlarged on \$1000 bail. Exception allowed.

DONE in open Court this 11th day of October, 1923.

JEREMIAH NETERER, *Judge.*

O. K. as to form, JAS. KIEFER.

Filed in the United States District Court, Western District of Washington, Northern Division, October 11, 1923.

F. M. HARSHBERGER, *Clerk.*

By S. E. LEITCH, *Deputy.*

No. 7845

Petition for Appeal

ROKIYI TAMBARA, the petitioner above named, deeming himself aggrieved by the order and judg-

ment entered herein on the 11th day of October, 1923, does hereby appeal from the said order to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that a transcript and record of proceedings and papers upon which said order is made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial District of the United States.

JAMES KIEFER,

Attorney for Petitioner.

Copy of foregoing petition for appeal received, and due service admitted, this 11th day of October, 1923.

DEWOLFE EMORY,

*Asst. U. S. District Attorney for
the Western District of Wash-
ington.*

Filed in the United States District Court, Western District of Washington, Northern Division, October 11, 1923.

F. M. HARSHBERGER, *Clerk.*

By S. E. LEITCH, *Deputy.*

No. 7845

Order Allowing Appeal and Fixing Bond

Now, to-wit, on the 11th day of October, 1923,

IT IS ORDERED, that the appeal be allowed as prayed for; and,

IT IS FURTHER ORDERED, that said petitioner, Rokiya Tambara, may at any time pending said appeal be at large upon executing a recognizance or bond to the United States of America, executed by an approved surety company, in the sum of one thousand (\$1000.00) dollars, to the satisfaction of the Clerk of this Court, for his appearance to answer the judgment of the Circuit Court of Appeals, or the judgment of the District Court if the same be affirmed.

JEREMIAH NETERER,

District Judge.

Filed in the United States District Court, Western District of Washington, Northern Division, October 11, 1923.

F. M. HARSHBERGER, *Clerk.*

By S. E. LEITCH, *Deputy.*

No. 7845

Notice of Appeal

To Luther Weedin, United States Commissioner of Immigration at the Port of Seattle, Washington, and to the United States of America, and to Thos. P. Revelle, Esq., United States District Attorney for the Western District of Washington:

You, and each of you, are hereby notified that Rokiya Tambara, petitioner above named, hereby and now appeals from that certain order, judgment and decree made herein by the above entitled Court on the 11th day of October, 1923, adjudging, holding, finding and decreeing that a petition of the petitioner for a writ of habeas corpus be dismissed, and that the petitioner be denied and refused a writ of habeas corpus, and adjudging that the petitioner had a fair and impartial trial before the Board of Special Inquiry and that the petitioner be remanded to the custody of Luther Weedin, United States Commissioner of Immigration for the Port of Seattle, Washington, for the carrying out of the sentence of deportation, and from the whole thereof to the United States Circuit Court of Appeals for the Ninth Circuit.

JAMES KIEFER,
*Attorney for Rokiya Tambara,
Petitioner and Appellant.*

Copy of foregoing notice of appeal received, and due service admitted, this 11th day of October, 1923.

THOS. P. REVELLE,
*U. S. District Attorney for the
Western District of Washing-
ton. B. K.*

Filed in the United States District Court, Western District of Washington, Northern Division, October 11, 1923.

F. M. HARSHBERGER, *Clerk.*
By S. E. LEITCH, *Deputy.*

No. 7845

Assignments of Error

Comes now the petitioner, Rokiya Tambara, and assigns error in the decision of the said District Court as follows:

I

The Court erred in holding and deciding that the petitioner, Rokiya Tambara, had a fair and impartial trial before the Board of Special Inquiry and before the Secretary of Labor.

II

The Court erred in holding and deciding that a petition for a writ of habeas corpus herein be dismissed, and that the writ of habeas corpus be denied and refused.

III

The Court erred in holding, deciding and adjudging that the petitioner, Rokiya Tambara, be remanded to the custody of Luther Weedon, as United States Commissioner of Immigration for the Port of Seattle, for execution of the order and sentence of deportation.

IV

The Court erred in deciding, holding and adjudging that under the evidence the Board of Special Inquiry and the Secretary of Labor were justified in finding and holding that petitioner, Rokiya Tambara, is afflicted with a physical defect likely to cause him to become a public charge, and in deciding, holding and adjudging that there was evidence in the record justifying such finding and holding by the said Board of Special Inquiry and the Secretary of Labor.

JAMES KIEFER,
Attorney for Rokiya Tambara,
Petitioner and Appellant.

Filed in the United States District Court, Western District of Washington, Northern Division, October 11, 1923.

F. M. HARSHBERGER, *Clerk.*
By S. E. LEITCH, *Deputy.*

No. 7845

Citation

United States of America:—ss.

To Luther Weedin, United States Commissioner of Immigration at the Port of Seattle, Washington, and to the United States of America, Greeting:

WHEREAS, Rokiya Tambara has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment, order and decree lately on, to-wit, the 11th day of October, 1923, rendered in the District Court of the United States for the Western District of Washington, made in favor of you, adjudging and decreeing that the petition of said Rokiya Tambara for a writ of habeas corpus be dismissed and that the writ of habeas corpus be denied and refused, and has filed the security required by law,

You are therefore cited to appear before the United States Circuit Court of Appeals, in the City of San Francisco, State of California, on the 10th day of November next, to do and receive what may obtain to justice to be done in the premises.

GIVEN under my hand in the City of Seattle, in the Ninth Circuit, this 11th day of October, in the year of our Lord Nineteen Hundred Twenty-three, and of the Independence of the United States the One Hundred Forty-eighth.

JEREMIAH NETERER,
*Judge of the U. S. District Court
for the Western District of Wash-
ington.*

Copy of foregoing citation received, and due service admitted, this 11th day of October, 1923.

THOS. P. REVELLE,
*U. S. District Attorney for the
Western District of Washington.*

Filed in the United States District Court, Western District of Washington, Northern Division, October 11, 1923.

F. M. HARSHBERGER, *Clerk.*
By S. E. LEITCH, *Deputy.*

No. 7845
Appeal Bond

KNOW ALL MEN BY THESE PRESENTS: That we, Rokiya Tambara, as principal, and the National Surety Co., a corporation under the laws of the State of New York and authorized to do, and doing, a surety business in the State of Washington, as surety, are held and firmly bound unto the United States of America in the full and just sum of one thousand (\$1000.00) dollars, to be paid to the United States of America, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 11th day of October, in the year of our Lord, Nineteen Hundred Twenty-three.

WHEREAS, lately at a District Court of the United States for the Western District of Washington, Northern Division, in a proceeding pending in said court, to-wit, a petition by the above named principal, Rokiya Tambara, for a writ of habeas corpus directed to Luther Weedon, commanding that he produce the body of said petitioner before the said

District Court, together with the cause of his detention; and

WHEREAS, upon the hearing of the said matter a judgment and decree was made by the said court in said cause denying the said writ of habeas corpus and dismissing the proceeding; and,

WHEREAS, the above named Rokiya Tambara has appealed from said judgment and decree in said habeas corpus proceeding to the United States Circuit Court of Appeals for the Ninth Circuit, and said Rokiya Tambara has obtained a citation directed to the said Luther Weedin, citing and admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, in said Circuit, on the 10th day of November, 1923;

Now, the condition of this obligation is such, that if the said Rokiya Tambara shall prosecute said appeal to effect and answer all damages and costs, if he fail to make the said plea good, and shall and do in all things comply with and perform the judgment of the United States Circuit Court of Appeals for the Ninth Circuit as well as the judgment of the said District Court, if the same shall be affirmed,

then this obligation to be void, else to remain in full force and effect.

ROKIYI TAMBARA.

By JAMES KIEFER,

His Attorney.

NATIONAL SURETY CO.

By C. B. WHITE,

Attorney in Fact.

Sealed and Delivered in Presence of:

(Seal) O. K.

DEWOLFE EMORY,

Asst. U. S. Atty.

The foregoing bond approved this 11th day of October, 1923.

JEREMIAH NETERER,

Judge United States District Court.

Filed in the United States District Court, Western District of Washington, Northern Division, October 11, 1923.

F. M. HARSHBERGER, *Clerk.*

By S. E. LEITCH, *Deputy.*

No. 7845

**Stipulation as to Printing and as to Sending
Up Original Exhibit**

IT IS STIPULATED between the appellant, by his attorney, and the respondent, by his attorney, that in printing the record in this cause that after the first occurrence of the caption it may be omitted and merely the title of the paper and number of the cause may be printed; and that the original record in the office of the Commissioner of Immigration at Seattle, Washington, filed herein September 17, 1923, as a part of the return of the Commissioner of Immigration to the order to show cause, be transmitted to the appellate court as an original exhibit and need not be printed.

Dated October 30, 1923.

JAMES KIEFER,

Attorney for Appellant.

THOS. P. REVELLE,

*United States Attorney and Attorney
for Respondent.*

By DEWOLFE EMORY,

Assistant United States Attorney.

Filed in the United States District Court, Western District of Washington, Northern Division, October 30, 1923.

F. M. HARSHBERGER, *Clerk*.

By S. E. LEITCH, *Deputy*.

No. 7845

Order for Transmission of Original Exhibit

Upon stipulation of counsel, IT IS BY THE COURT ORDERED, AND THE COURT DOES HEREBY ORDER, that the original record in the United States Immigration Office at Seattle, Washington, filed herein as a part of the return of the Commissioner of Immigration to the order to show cause, be transmitted by the Clerk of this Court to the United States Circuit Court of Appeals for the Ninth Circuit as an original exhibit, and that the same need not be printed.

Done in open Court this 30th day of October, 1923.

JEREMIAH NETERER, *Judge*.

O. K. as to form.

DEWOLFE EMORY, *Asst. U. S. Atty.*

Filed in the United States District Court, Western District of Washington, Northern Division, October 30, 1923.

F. M. HARSHBERGER, *Clerk*.

By S. E. LEITCH, *Deputy*.

Clerk's Certificate

United States of America,)
) ss.
Western District of Washington.)

I, F. M. Harshberger, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing 26 printed pages, 1 to 26, inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause, as same appears upon the record of this cause and appeal, and as the same remain of record and on file in the office of the Clerk of said Court, and that the same constitute the record on appeal from the order, judgment and decree of the District Court of the United States for the Western District of Washington to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that I hereto attach and herewith transmit the original citation in this cause, and the original record in the office of the United States Commissioner of Immigration at Seattle, referred to and made a part of the return of said Commissioner and filed herein September 17, 1923.

I further certify that the cost of preparing the foregoing record on appeal, and printing the same, is the sum of \$44.80, to-wit: \$6.05 Clerk's fees and \$38.75 printing, and that the said sum has been paid by James Kiefer, Attorney for Appellant.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, on this 6th day of November, 1923.

(Seal) F. M. HARSHBERGER,
*Clerk of the United States District
Court for the Western District
of Washington.*